

STATE OF MICHIGAN  
COURT OF APPEALS

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RAUL GUERRERO,

Plaintiff/Counter-Defendant-  
Appellant,

v

MARGARET ANN FARMER,

Defendant/Counter-Plaintiff-  
Appellee,

and

JASMINE ANN SMITH,

Defendant-Appellee.

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UNPUBLISHED

October 26, 2004

No. 253334

Marquette Circuit Court

LC No. 02-039306-NO

Before: Murphy, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendants in this action involving claims of malicious prosecution, defamation, conspiracy, and parental liability that arose out of a failed criminal prosecution of plaintiff for second-degree criminal sexual conduct, MCL 750.520c. We affirm.

This Court reviews a ruling on a motion for summary disposition de novo. *Maskery v Univ of Michigan Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003). A motion under MCR 2.116(C)(10) tests the factual support for a party's claim. *Blase v Appicelli*, 195 Mich App 174, 177; 489 NW2d 129 (1992). In determining a motion for summary disposition under this court rule, a court considers the pleadings, affidavits, depositions, admissions, and other admissible evidence in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.*

This case stems from criminal charges that were brought against plaintiff based on allegations of sexual molestation by defendant Smith, his then thirteen-year-old stepdaughter. Defendant Farmer is Smith's mother and was married to plaintiff at the time of the allegations. Based on a police report containing Smith's allegations, the prosecutor found probable cause and

issued charges against plaintiff for second-degree criminal sexual conduct, MCL 750.520c(1)(b). At the preliminary examination, the district court found probable cause, and plaintiff was bound over for trial in the circuit court. The trial resulted in the jury being unable to reach a verdict, and the court declared a mistrial. The prosecutor then declined to retry plaintiff, and the charges were dismissed.

Plaintiff first argues that the trial court erred in granting defendants' motion for summary disposition on his claim for malicious prosecution. We disagree. To prove a claim of malicious prosecution, plaintiff must show (1) defendants initiated a criminal proceeding against plaintiff, (2) that the proceeding was terminated in plaintiff's favor, (3) that defendants, when they initiated or maintained the proceeding, lacked probable cause for their actions, and (4) defendants initiated the proceeding with malice or a purpose other than bringing an offender to justice. *Matthews v Blue Cross & Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).

Defendants argue that they were not the ones who initiated the criminal proceedings and that there was probable cause for the proceedings to be initiated. Ordinarily, the prosecutor initiates a criminal proceeding, not a private party. Only when a person supplies a prosecutor with information implicating someone in a crime, which that person knows to be false, and the prosecutor acts on that information to find probable cause to initiate a criminal proceeding, will a private individual be thought of as having initiated the criminal proceeding. *Matthews, supra* at 385. Here, the prosecutor acted mainly on information supplied to the police by defendants. Thus, plaintiff would have to show that defendants knew the information they were supplying the prosecutor was false. The only evidence that plaintiff presented to support that defendants knowingly supplied false information to the police was plaintiff's statement that he did not sexually molest Smith and that Smith's story was not believable. With respect to defendant Farmer, there was no evidence whatsoever indicating that she had information that the allegations made by her daughter were false. With respect to defendant Smith, the evidence that was presented showed that the police, prosecutor's office, and the district court all concluded that Smith's story was believable enough to support a finding of probable cause. Although plaintiff alleges that Smith was lying, plaintiff's conclusory denial of wrongdoing without more fails to give rise to a genuine issue of material fact in regard to whether Smith purposefully lied to police. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993); *Pauley v Hall*, 124 Mich App 255, 262; 335 NW2d 197 (1983). There was no evidence that Smith ever recanted or informed others of a different version of events, nor was her account implausible. Reversal is not mandated.

Additionally, plaintiff cannot show that the proceedings lacked probable cause. In fact, plaintiff admitted at the preliminary examination that there was probable cause to bind the criminal case over to circuit court, and he admitted during discovery in this case that there was probable cause to initiate the criminal proceedings. Plaintiff argues that defendants lied to the prosecutor and the court and, therefore, the probable cause is negated. However, we rejected this argument above.

Plaintiff also argues that the trial court erred when it dismissed plaintiff's defamation count against both defendants. Plaintiff argued below that defendants made defamatory statements to police and Smith made defamatory statements in a letter she wrote to a friend about the abuse.

Certain statements are absolutely privileged and thus protected from a defamation action. *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). These include statements made during the course of judicial proceedings, *id.*, and statements made to police officers regarding criminal activity, *Hall v Pizza Hut of America, Inc.*, 153 Mich App 609, 619; 396 NW2d 809 (1986). In this case, the statements defendants made to the police and in the course of the judicial proceedings were absolutely privileged. Additionally, the letter Smith wrote was never sent or published to her friend. Therefore, the trial court did not err in dismissing plaintiff's defamation count.

Plaintiff on appeal argues that defendants made defamatory statements to third parties other than the police and that any statements Smith told Farmer would be considered defamation. However, these issues are being raised for the first time on appeal and were not decided by the trial court. Therefore, they are not preserved for review. *Blase, supra* at 179.

Plaintiff next argues that the trial court erred in dismissing his conspiracy claim. We disagree. The conspiracy claim was based on plaintiff's claims that defendants conspired to commit the malicious prosecution and the defamation. Because we have concluded that the trial court did not err in dismissing those claims, it also did not err in dismissing the conspiracy claim because it was derivative of the malicious prosecution and defamation claims. Additionally, plaintiff did not offer any evidence to support his allegation that defendants conspired together to commit defamation, malicious prosecution, or any other wrongful act. See *McCormic, supra* at 237 (stating that a party cannot rely on allegations in the pleadings but must present documentary evidence beyond the pleadings showing that a material issue of fact exists).

Plaintiff finally argues that the trial court erred in dismissing his claim of parental liability against Margaret Farmer. We disagree. MCL 600.2913 allows an action for recovery of up to \$2,500 in damages from a minor's parent(s) where the minor maliciously or willfully destroys another's property or inflicts bodily injury. However, MCL 600.2913 is not a cause of action itself; it provides a method for collecting damages for the tortious conduct of an unemancipated child. *Citizens Ins Co of America v Lowery*, 159 Mich App 611, 618-619; 407 NW2d 55 (1987). The clear language of the statute shows that it only applies to physical harm or injuries, not injury to reputation and other non-physical injuries as plaintiff claims here. Moreover, there was insufficient evidence presented to create a genuine issue of material fact as to liability under the statute. We also note that this count by its very nature cannot be applied to hold defendant Smith liable. The trial court did not err in granting summary disposition.

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Jane E. Markey